

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CC INVESTORS CORP., :
on behalf of itself and all :
others similarly situated, :
 :
Plaintiff, :
 :
v. : Civil Action No. 03-114 JJF
 :
RAYTHEON COMPANY, RAYTHEON :
TRAVEL AIR COMPANY, FLIGHT :
OPTIONS, LLC, and FLIGHT :
OPTIONS INTERNATIONAL, INC., :
 :
Defendants. :

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International, Inc.

MEMORANDUM OPINION

November 25, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Defendants' Motion To Dismiss Plaintiff's Amended Complaint Pursuant To Rule 12(b)(3) Or, In The Alternative, Motion To Transfer Venue. (D.I. 17.) For the following reasons, the Court will deny the motions.

BACKGROUND

The dispute in this case arises from Plaintiff's fractional ownership interests in aircraft originally owned and operated by Raytheon Travel Air ("Travel Air"), a wholly owned subsidiary of Raytheon Co. ("Raytheon"). Travel Air was organized and has its principal place of business in Kansas. Raytheon was incorporated in Delaware and has its principal place of business in Massachusetts.

Various agreements (the "Governing Documents") between Travel Air and Plaintiff obligated Travel Air to provide maintenance and other services to the aircraft in which Plaintiff held fractional ownership interests. The Governing Documents also prohibited Travel Air's assignment of its obligations to any entity not "fully capable or qualified" of fulfilling Travel Air's duties to Plaintiff.

On or about March 2, 2002, Raytheon and Flight Options, a Delaware corporation, entered into a merger agreement whereby Raytheon allegedly directed Travel Air to assign the obligations it owed to Plaintiff to a Delaware entity Raytheon and Flight

Options created, Flight Options LLC (the "LLC"). (D.I. 7 at 9.) Subsequent to this transfer, the LLC began experiencing financial difficulties and allegedly raised costs for the services provided under the Governing Documents. Thereafter, Plaintiff filed the instant action.

DISCUSSION

I. Whether Venue Is Proper In Delaware

Plaintiff contends that venue is proper in Delaware because the Defendants, Raytheon, and Travel Air all reside and a substantial part of the events giving rise to the claims in this action occurred within this district. (D.I. 33 at 8-13.) The Defendants contend that Travel Air does not reside in Delaware and that the LLC's creation in Delaware is not a substantial part of the events giving rise to the claims in this action. (D.I. 18 at 8-14.)

In a Rule 12(b)(3) motion, the moving party bears the burden of proving that venue is improper. See Myers v. Am. Dental Assoc., 695 F.2d 716, 724-25 (3d Cir. 1982). According to 28 U.S.C. § 1391(a), venue is proper in a jurisdiction where:

"[1] any defendant resides, if all defendants reside in the same state, 2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . ., or 3) a judicial district in which the defendants are subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought."

Id. "[A] defendant that is a corporation shall be deemed to

reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.” 28 U.S.C. § 1391(c). Applying these principles to the facts in this case, the Court will deny the Defendants’ Motion to dismiss for improper venue.

Raytheon and the Defendants were incorporated in Delaware; and, as the Court noted in a Memorandum Opinion regarding Travel Air’s Rule 12(b)(2) motion to dismiss, the Court has personal jurisdiction over Travel Air. Travel Air’s actions in capitalizing the LLC, a Delaware entity, led to Plaintiff’s instant action. The Court concludes that these acts were sufficient to establish personal jurisdiction over Travel Air. See J. Jeffreys v. M. Exten, 784 F. Supp. 146, 151 (D. Del. 1992) (noting that personal jurisdiction may be asserted over a single act related to a jurisdiction, provided the resulting claim has its basis in the asserted transaction). Accordingly, the Court concludes that venue is proper in Delaware.

II. Whether The Court Should Transfer The Action To The Northern District Of Ohio

Plaintiff contends that it filed the instant action in Delaware because Raytheon “probably would have” objected to personal jurisdiction in Ohio. (D.I. 33 at 16.) Plaintiff also contends that the private and public interests do not tip strongly in favor of a transfer of this action to Ohio. Id. at 15-21. In response, the Defendants contend that even if the

Court concludes that venue is proper in Delaware, the Court should transfer the instant action to Ohio because the convenience of the parties and witnesses and the interests of justice make Ohio the appropriate venue for this action. (D.I. 18 at 14-25.)

A court may transfer an action “[f]or the convenience of parties and witnesses, in the interest of justice . . . to any other district or division where [the action] might have been brought.” 28 U.S.C. § 1404(a) (emphasis added). However, the transferee district must have been able to assert personal jurisdiction over the defendant independent of the defendant’s consent. See Hoffman v. Blaski, 363 U.S. 335, 343-44 (1960); Affymetrix, Inc. v. Synteni, Inc., 128 F. Supp.2d 192, 194 n.1 (D. Del. 1998). The moving party bears the burden of proving that the action “properly could have been brought in the first instance in the transferee district.” 17 Moore’s Federal Practice § 111.12[3] (citing Waste Distillation Tech. v. Pan Am. Res., 775 F. Supp. 759, 762 (D. Del. 1991)). In applying these principles, the Court concludes that the Defendants’ Motion to transfer should be denied because the Defendants have failed to present sufficient evidence demonstrating that the instant action could have originally been filed in Ohio.

The Defendants contend that Plaintiff’s assertion that Raytheon “probably would have” objected to personal jurisdiction

in Ohio is "plainly inconsistent with the Flight Options' Local Rule 7.1.1. Certification, which reveals that . . . Raytheon [has] stipulated to the transfer of this action to . . . Ohio." (D.I. 33 at 14.) However, as the Supreme Court observed in Hoffman, personal jurisdiction must exist over the defendant, independent of the defendant's consent. Hoffman, 363 U.S. at 343-44. Consequently, the Defendants, the party with the burden on the instant motion, have not presented the Court with sufficient evidence demonstrating that this action could have been brought in Ohio. Therefore, the Court will deny the Defendants' Motion to Transfer.

CONCLUSION

For the reasons discussed, the Court will deny the Defendants' Motion to Dismiss pursuant to Rule 12(b)(3) and deny Defendants' Motion to Transfer Venue. An appropriate Order will be entered.

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ORDER

WHEREAS Defendants Flight Options, LLC (the "LLC") and Flight Options International, Inc. ("Flight Options") filed a Motion To Dismiss Plaintiff's Amended Complaint Pursuant To Rule 12(b)(3) Or, In The Alternative, Motion To Transfer Venue (D.I. 17);

NOW THEREFORE, IT IS HEREBY ORDERED this 25th day of November, 2003, that:

1) The LLC's and Flight Options's Motion To Dismiss Plaintiff's Amended Complaint Pursuant To Rule 12(b)(3) (D.I. 17) is **DENIED**;

2) The LLC's and Flight Options's Motion To Transfer Venue (D.I. 17) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE